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Special:

TO: ALL PUBLIC AGENCIES

SUBJECT: Cargill, et al. v. Metropolitan Water District of Southern California, et al.

CalPERS understands that recently there has been information circulated concerning the subject litigation. The purpose of this Circular Letter is to explain the litigation and its relationship to CalPERS.

This is a class action lawsuit brought against the Metropolitan Water District of Southern California (District) and approximately eighty private sector "temporary agencies" in Los Angeles County Superior Court. The plaintiffs are individuals who have performed services for the District who allege the District and the other defendants engaged in a scheme to misclassify full-time employees. These persons were allegedly designated as temporary agency employees, temporary employees or consultants instead of "regular employees." The plaintiffs allege they have been denied compensation, benefits, and employment rights as a result of this misclassification. The District and the other defendants deny these allegations.

Among the benefits plaintiffs seek is CalPERS membership. The District is a contracting public agency with CalPERS. Under the law governing CalPERS, all persons "in the employ" of the District who are not expressly excluded by statute or under the terms of the District's contract with CalPERS must be enrolled as CalPERS members. Plaintiffs contend that under these membership provisions, employment is defined by the common-law rules governing the employer-employee relationship. By contrast, the District contends CalPERS membership is restricted to those employees that have been hired under the applicable civil service rules and are directly paid by contracting public agencies.

The court has decided to resolve several key issues through a hearing process, if possible, before proceeding to trial. One key issue the court will hear is whether the district is required by law to enroll all common law employees in CalPERS.

CalPERS believes that resolution of this issue will require the court to determine the meaning of the pertinent membership provisions of the law governing membership eligibility in the retirement system. For this reason, CalPERS is asking the court for permission to participate in the litigation as an interested party.

In the view of CalPERS, the statutes governing the membership of contracting public agency "employees" are defined by the common-law rules governing the employer-employee relationship. If CalPERS is granted permission to participate in the litigation, it will advocate this position to the court.

At this point, however, the issue before the court does not include statutory or contractual exclusions, such as the exclusion for part-time employees. Moreover, CalPERS is not seeking to bring any individual into membership in the retirement system. Once the court has decided the meaning of the statutes, CalPERS will decide whether the ruling of the court warrants a review of the membership status of those individuals who have provided services to the District.

Finally, CalPERS will not take a position on any of the other issues that are currently before the court. These include compensation, civil service, and other employment rights.

If you have any questions regarding the litigation or its impact on CalPERS, you may call Peter Mixon, Sr. Staff Counsel, at (916) 326-3797.

Kenneth W. Marzion, Chief
Actuarial & Employer Services Division